

Service Date: August 15, 2003

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF)	UTILITY DIVISION
Tariff Transmittal QLDC02-01)	
by Qwest LD Corp. d/b/a Qwest Long Distance)	DOCKET NO. D2002.12.153
Initial Tariff and Price List for Qwest Long)	
Distance)	ORDER NO. 6479c

ORDER ON MOTION FOR RECONSIDERATION

Background and Findings of Fact

1. On December 9, 2002 Qwest Long Distance Corporation (d/b/a Qwest Long Distance or QLD) ("QLD" or "Qwest") filed an initial tariff and price list pages for QLD.
2. On December 23, 2003, the Commission authorized QLD to use existing IntraLATA tariff and prices lists on filed for Qwest Corporation in the InterLATA market upon the Federal Communication Commission's ("FCC") approval of Qwest's application under 47 U.S.C. Section 271. QLD was required to file a compliance tariff consistent with the Commission's decision prior to offering InterLATA service in Montana. (Notice of Commission Action dated December 23, 2003.)
3. On December 26, 2003, QLD filed a response to the Commission's Action of December 23, 2003, requesting action on an emergency basis by December 31, 2003. The Commission treated the request as a motion for reconsideration of its December 23, 2003 action and denied the request. (Notice of Commission Action dated January 3, 2003.)
4. On January 22, 2002, QLD filed a Motion for Interim Relief and a Brief in Support of its Request for Interim Relief (Motion and Brief). In a regularly scheduled work session held February 5, 2003 the Commission authorized Qwest to implement on an interim basis the December 9, 2002 filing with certain modifications.
5. On April 23, 2003, Qwest filed Tariff Transmittal QLDC03-02, requesting revision to the interim tariff. On May 7, 2003 the Commission rejected tariff transmittal QLDC03-02 but

added it to Qwest's opening round of testimony for consideration in this docket. (NCA issued May 7, 2003.)

6. On June 3, 2003, by letter dated June 4, 2003, Qwest filed tariff transmittal QLDC03-03, requesting revision of the interim tariff. On June 16, 2003, the Commission rejected tariff transmittal QLDC03-03 but added it to Qwest's opening round of testimony for consideration in this docket. The procedural schedule was amended to reflect this addition to the opening round of testimony.

7. On July 16, 2003 the Commission identified additional issues in this docket, and required Qwest to file additional initial testimony on the identified issues by August 18, 2003. (Notice of Commission Action issued July 16, 2003.)

8. On July 23, 2003, Qwest filed a "Motion for Reconsideration of the Commission's Decision to Extend the Schedule in this Proceeding to Address Additional Issues." Qwest asked that the Commission reconsider its decision to extend the schedule in this proceeding to address additional issues. Qwest further requested that the Commission consider the costing issues, which were identified as additional issues in the July 16, 2003 NCA, as within the testimony submitted pursuant to the existing procedural schedule.

9. In the July 16, 2003 NCA requiring Qwest to submit additional issues testimony, the Commission stated that it expects a thorough investigation of whether QLD's rates are cost based. The Commission set out four specific issues on which additional testimony is necessary:

- a. The costing testimony must be Montana specific and address all related such concerns raised in the Montana Consumer Counsel's (MCC) testimony of Mr. Allen Buckalew;
- b. The costing testimony must reflect the costs for QLD in Montana.
- c. The costing testimony must address and reflect the costs QCC will likely incur assuming it provides long distance service in Montana.
- d. The cost studies must be clear and must separately address each interim approved rate for QLD's Montana business.

10. Qwest's July 23, 2003 motion for reconsideration requested that the PSC reconsider its decision to extend the schedule in this proceeding to address additional issues. Qwest argued in its motion that "QLD timely filed rebuttal testimony on these costing issues in the docket on July 18, 2003" and that the rebuttal testimony "addresses the specific concerns raised by Mr. Buckalew and is the proper means by which his testimony should be addressed." (Qwest Motion paragraph 5.) Qwest further argued that the "prescribed process is for the parties to submit the evidence they choose to present in support of their respective positions and have an opportunity for cross-examination and rebuttal before the evidence is considered by the decision-maker." (Qwest Motion paragraph 6.) Qwest requested the Commission "consider the costing issues within the testimony submitted pursuant to the existing procedural schedule and refrain from further amendments to that schedule." (Qwest Motion, concluding paragraph.)

11. This docket, D2002.12.153, was opened for the purpose of setting just and reasonable rates pursuant to which QLD may offer service in Montana. QLD's current rates are in place on an interim basis only, subject to the outcome of the hearing in this docket.

12. The rates that QLD is entitled to charge for its service in Montana must be just and reasonable. MCA § 69-3-201. At hearing, QLD bears the burden of showing that the rates it proposes charging are just and reasonable.

13. QLD has had several opportunities to introduce evidence in this docket: its initial filing on December 9, 2003; its first revised tariff submitted on April 23, 2003 and rolled into the initial filing for consideration in this docket; its second revised tariff submitted on June 3, 2003 and rolled into the initial filing for consideration in this docket; and the additional issues notice issued by the Commission on July 16, 2003.

14. In its Motion for Reconsideration, QLD represented that it addressed the costing issues raised by the Commission in its rebuttal testimony (Finding of Fact 10, above.) QLD by its motion for reconsideration has declined to produce further evidence related to the issues identified as relevant by the Commission and has stated that it will rely upon its rebuttal testimony with respect to those issues.

15. The procedural schedule set a date of July 28, 2003 as the final day for discovery on QLD rebuttal testimony.

Conclusions of Law

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. QLD is a public utility offering regulated telecommunications services in the State of Montana. Sections 69-3-101, 803, MCA.

2. Every public utility shall file with the Commission tariffs (schedules) that are in force at the time any service is to be performed by it within the State of Montana. Section 69-3-301, MCA.

3. QLD is currently providing service in Montana on the basis of interim rates. (Order No. 6479a, entered in D2002.12.153; interim rates approved on February 14, 2003.)

4. The rates that QLD is entitled to charge for service in Montana must be just and reasonable, and QLD has the burden of showing that the rates it proposes charging in Montana are just and reasonable. MCA § 69-3-201.

5. QLD has represented to the Commission that it does not consider it necessary to present additional evidence as requested by the Commission and wishes to proceed to hearing on the evidence submitted in this docket to date. QLD has been provided the opportunity to present the required evidence and has declined to do so.

6. QLD has determined that its rebuttal testimony adequately addresses the issues identified in the Commission's July 16, 2003 decision.

Order

THEREFORE, based upon the foregoing, it is ORDERED that:

1. QLD's motion for reconsideration is granted with the following specific limitations and reservations:

- a. The costing testimony requested by the Commission in its July 16, 2003 NCA identification of additional issues has not been presented to the Commission in the docket to date;
- b. The additional issues in the July 16, 2003 NCA were identified by Commission

staff;

- c. QLD's bears the burden of prevailing on the issues in this docket;
- d. The hearing in this docket will not be extended at Qwest's request to proceed on the evidence introduced to date; and
- e. The sufficiency of the evidence remains an issue to be decided at hearing.

3. The Commission's decision in the July 16, 2003, NCA with respect to the evidence required to be submitted by QLD that is relevant and necessary for QLD to make the requisite showing in this docket remains in full force and effect.

4. Nothing in this Order represents a prejudgment on the merits of any issue that may arise as a result of the QLD filing.

DONE AND DATED this 29th day of July, 2003, by a vote of 3 to 2.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ROWE, Chairman

THOMAS J. SCHNEIDER, Vice Chairman

MATT BRAINARD, Commissioner
Voting to Dissent

GREG JERGESON, Commissioner
Voting to Dissent

JAY STOVALL, Commissioner

ATTEST:

Ann Purcell
Acting Commission Secretary

(SEAL)

NOTE: You may be entitled to judicial review in this matter. Judicial review may be obtained by filing a petition for review within thirty (30) days of the service of this order. Section 2-4-702, MCA.